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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re XAVIER M., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY DEPARTMENT OF CHILDREN'S SERVICES, Plaintiff and Respondent, v. BRYAN M., Defendant and Appellant.	E042139 (Super.Ct.No. J202026) **OPINION**

APPEAL from the Superior Court of San Bernardino County. A. Rex Victor, Judge. Affirmed.

Donna P. Chirco, under appointment by the Court of Appeal, for Defendant and Appellant.

Ruth E. Stringer, County Counsel, and Sandra D. Baxter, Deputy County Counsel, for Plaintiff and Respondent.

Konrad S. Lee, under appointment by the Court of Appeal, for Minor.

Bryan M. (Father) appeals from an order terminating his parental right as to his two-year-old son, Xavier M. Father's sole contention on appeal is that the Department of Children's Services (DCS) failed to substantially comply with the notice provisions of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1912(a)). We reject this contention and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

The relevant facts pertaining to the ICWA issue are as follows: At the time of the detention hearing on June 7, 2005, Xavier's mother (Mother) completed a JV130 form, indicating that she had American Indian heritage of Cherokee origin. Minor's maternal great-grandparents appeared at the detention hearing, and the following colloquy regarding possible Indian heritage occurred:

"THE COURT: Also, do you have any American Indian ancestry?

"THE MOTHER: No.

"THE MATERNAL GREAT-GRANDMOTHER: Yes, she does. [¶] . . . [¶]

"THE COURT: Oh, you might know. [¶] Okay. This is the maternal great-grandmother speaking. [¶] What?

"THE MATERNAL GREAT-GRANDMOTHER: Her grandfather -- grandmother is full-blooded Cherokee.

"THE COURT: So one of your daughters was?

"THE MATERNAL GREAT-GRANDMOTHER: No. My husband's mother was full-blooded Cherokee.

"THE COURT: So the maternal or paternal?

"THE MATERNAL GREAT-GRANDMOTHER: Great-grandfather.

"THE COURT: What was the name of that person?

"THE MATERNAL GREAT-GRANDFATHER: Lyle.

"THE COURT: Full name?

"THE MATERNAL GREAT-GRANDFATHER: L-Y-L-E.

"THE MATERNAL GREAT-GRANDMOTHER: Full name of the grandfather? I don't remember.

"THE COURT: So you don't have a date of birth or anything?

"THE MATERNAL GREAT-GRANDFATHER: No, I don't.

"THE COURT: What tribe?

"THE MATERNAL GREAT-GRANDFATHER: Cherokee.

"THE COURT: Any state? Oklahoma?

"THE MATERNAL GREAT-GRANDFATHER: No.

"THE COURT: Anybody in your family that would have any more specific information? Because what -- under the law, we're required to notify any tribes if a child has American Indian ancestry.

"THE MATERNAL GREAT-GRANDMOTHER: It's just Virginia. That's all we know. He was born in Virginia.

"THE COURT: Do you have anymore information?

"THE MATERNAL GREAT-GRANDFATHER: No, I don't. [¶] . . . [¶]

"THE COURT: This would have been your mother?

"THE MATERNAL GREAT-GRANDFATHER: My mother's mother.

"THE COURT: That is a lot of greats in there. You guys are ordered to cooperate with the social worker and provide enough information that we can notify the tribes. You're in contact with the worker anyway.

"THE MATERNAL GREAT-GRANDMOTHER: Oh, yes.

"THE COURT: If you can give them as much detailed information as you can so we can try to notify them."

On June 14, 2005, DCS mailed JV-135 forms, "Notice of Involuntary Child Custody Proceedings," by certified mail to the Bureau of Indian Affairs (BIA) in Virginia, to the Sacramento Area Director of the BIA, and the Cherokee Nations of Oklahoma. Information on the forms included Xavier's name, date of birth, and city and state of birth. Mother's and Father's names, addresses, and dates of birth were provided, but their places of birth were not. For Mother, the form noted that Mother had alleged membership in the Cherokee tribe in Virginia. As to Father, the information provided as to tribal affiliation was "None disclosed at this time." Maternal grandmother's maiden name, address, and date of birth were provided, as well as alleged membership in the Cherokee tribe of Virginia; maternal grandmother's place of birth was omitted. Maternal grandfather's name was provided, but his address was not provided; the month and date of his birth were provided, but not the year. The paternal grandparents' names, addresses, and dates of birth were provided; their tribal affiliation was listed as "unknown." The maternal great-grandmother's married name, address, and birth date were provided, as well as the name, address, and date of birth of the maternal great-

grandfather. It was also noted that the maternal great-grandfather's tribal affiliation was "Cherokee in Virginia." The paternal great-grandparents were not included in the known family history. The name "Lyle" was omitted from these forms.

Father subsequently informed the social worker that he had American Indian ancestry and alleged to be Cherokee Indian.

In August 2005, DCS sent new JV-135 forms by certified mail to the BIA Sacramento Area Director, the United Keetoowah Band of Cherokee (United Keetoowah), the Eastern Band of Cherokee Indians (Eastern Band), and the Cherokee Nation of Oklahoma (Cherokee Nation). These forms included relatively the same information as noted above, but omitted information concerning the maternal great-grandparents' tribal affiliation as well as the name of the maternal great-great-great-great relative "Lyle." In addition, the maternal great-grandfather's information was modified to indicate his date and place of death.

Signed certified mail receipts from the BIA, United Keetoowah, Eastern Band, and Cherokee Nation are included in the record.

DCS received three letters dated August 20 and 30, 2005, and March 7, 2006, from the Eastern Band stating that they had researched their tribal registry and would not consider Xavier an Indian child within the meaning of the ICWA. They noted, however, that the determination was based on the information provided, and any incorrect or omitted family documentation could invalidate their determination.

In October 2005, DCS received a letter from the Cherokee Nation stating that they had examined their tribal records and that Xavier could not be traced in their tribal

records. They therefore did not consider Xavier to be an "Indian child" as defined in the ICWA. Again, however, that determination was based on the information provided, and any incorrect or omitted family documentation could invalidate it. DCS received similar letters from the United Keetoowah in Tahlequah, Oklahoma, and Park Hill, Oklahoma.

DCS also received a letter from the BIA. The letter, in relevant part, noted that the family had provided insufficient information substantiating any federally recognized tribe and that "[t]he family must provide a history back to the year 1900 with names, birth dates and/or birthplaces of ancestors to help in establishing a biological link with the original tribal member(s). Further information is needed on paternal side; on maternal side." (Emphasis omitted.)

Throughout the dependency proceedings, the social worker had contact with the maternal great-grandparents. In fact, Xavier was placed with the maternal great-grandparents. In addition, though Father's whereabouts were initially unknown, he was later found to be residing with his father (the paternal grandfather).

At a March 30, 2006, hearing, the court found that the ICWA did not apply and that DCS had satisfied the ICWA noticing requirements.

Parental rights were eventually terminated on January 8, 2007. This appeal followed.

II

DISCUSSION

Father argues the order terminating his parental rights must be reversed because DCS failed to comply with the notice requirements of the ICWA. Specifically, he

contends ICWA notice was deficient because the forms failed to include each adult member's place of birth and information that the American Indian heritage was derived from the maternal great-great-great-great-grandmother named Lyle.[1] DCS did not include the name of the maternal great-great-great-great grandparent ("Lyle") in the notice forms. Father argues this was in error and requires reversal of the order terminating his parental rights. We disagree. Under the federal guidelines, DCS was not required to include the name of the great-great-great-great relative. (25 C.F.R. § 23.11(d)(1- 4) (2001).) All that was required was the name of the biological mother, biological father, and maternal and paternal grandparents and great-grandparents. (*Ibid*.) In addition, there is no evidence that the name "Lyle" would have assisted the relevant Indian tribes in determining whether the child or his parents were eligible for membership in that tribe.

DCS did not have any other information than the name "Lyle." Certain key ancestor information is to be included "if known." (25 C.F.R. § 23.11(d).) DCS must inquire as to possible Indian ancestry and act on any information it receives. (*In re Levi U*. (2000) 78 Cal.App.4th 191, 198-199.) There is no duty to conduct an extensive independent investigation for information. (*Ibid*.) In the instant case, there is no evidence that DCS failed to include any ancestral information that Father, Mother, or other relatives did or could provide. Given the lack of information regarding tribal heritage, DCS carried out its statutory duty in the instant case.

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[1] The record suggests, but is not completely clear, that it was a male relative who had the name Lyle.

Father also points out that DCS omitted information regarding the place of birth for the parents, the parental and maternal grandparents, and the paternal and maternal great-grandparents. DCS had contact with the child's parents, maternal great-grandparents and the paternal grandfather and thus could have discovered additional information as to their place of birth. However, Father does not suggest how this information could have made a difference in determining the child's status as Indian child. Neither the tribes nor the BIA requested any additional information. Despite the perceived inadequacies in the forms, we find that the notice provided in the circumstances of this case was sufficient. Here the information given to DCS by the parents and maternal great-grandparents regarding possible Indian heritage was minimal. Accordingly, considering the vague nature of the available information regarding tribal heritage and the negative responses from the tribes, we find no error requiring reversal.

Unlike in this case, the court in *In Dwayne P. v. Superior Court*, *supra*, 103 Cal.App.4th 247 found the Health and Human Services Agency failed to comply with the notice requirements when both parents stated that they might have Cherokee Indian heritage and the agency, while noting that the ICWA "may apply," sent no notice to the Cherokee tribes or to the BIA. (*Id*. at p. 257.) On these facts, the appellate court reversed the juvenile court's order terminating parental rights. Similarly, in *In re Marinna J.*, *supra*, 90 Cal.App.4th 731, the court reversed juvenile court orders where the father had informed the social worker that the child was of Cherokee Indian ancestry but no notice had been sent to any Cherokee tribe or to the BIA. In *In re Samuel P.*, *supra*, 99 Cal.App.4th 1259 the court held that there was reversible error when the Department

of Family and Children's Services had solid information regarding direct tribal lineage but sent notice regarding only one of three children and without any information whatsoever regarding the dependency proceedings. In *In re Kahlen W., supra*, 233 Cal.App.3d 1414, the court found there was no substantial compliance with notice requirements where a social services employee, in an attempt to determine the child's status, contacted three local bands of the Miwok tribe by telephone rather than sending notice of the proceedings by registered mail.

The deficiencies in notice alleged by Father here do not amount to reversible violations of the ICWA as in the cases cited above. As the court observed in *In re Jonathan D.* (2001) 92 Cal.App.4th 105, 110, "appellate courts in California have recognized that technical compliance with the Act's notice requirements may not be required where there has been substantial compliance . . . ." Here the parents and maternal great-grandparents provided scant information to DCS. Neither one was a member or eligible to be a member in an Indian tribe. Notice was sent to all tribes identified by the parents and maternal great-grandparents and all responded indicating that Xavier was not a member or eligible to be a member. No tribes asked for further information, and the parents did not provide any more detailed information. Responses from the relevant Cherokee tribes also indicated that it had researched Xavier's Indian heritage, it had found he was not a member, and it did not intend to intervene in the proceedings. Any failure to provide adequate notice to the tribe(s) is not reversible error if the tribe indicates that it has no interest in the proceedings. (See *In re Marinna J., supra*, 90 Cal.App.4th at p. 736; *In re Kahlen W., supra*, 233 Cal.App.4th at p. 1424.)

In sum, we find on this record as a whole that the notice sent by DCS substantially complied with the ICWA and that any deficiencies in notice were de minimus and not prejudicial. The tribes' determinations that Xavier was not an Indian child within the meaning of the ICWA were conclusive. (Rule 5.664(g)(1); *In re Junious M.* (1983) 144 Cal.App.3d 786, 793.) The juvenile court's determination that the ICWA did not apply was supported by the record.

III

DISPOSITION

The judgment is affirmed.

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RICHLI
J.

We concur:

HOLLENHORST
Acting P.J.

McKINSTER
J.